UNITED NATIONS

AT

Administrative Tribunal

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ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 588

Case No. 655: DARLINGTON

Against: The Secretary-General of the International Maritime Organization

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Jerome Ackerman, President; Mr. Ioan Voicu; Mr. Francis Spain;

Whereas at the request of Françoise Darlington, a staff member of the International Maritime Organization, hereinafter referred to as IMO, the President of the Tribunal, with the agreement of the Respondent, successively extended to 21 August, 21 November 1991 and 21 February 1992, the time-limit for the filing of an application to the Tribunal;

Whereas, on 21 February 1992, the Applicant filed an application requesting the Tribunal to rule as follows:

"(a) That, being a senior official of the Organization not permanently resident in the United Kingdom and not a citizen of the United Kingdom and Colonies, the Applicant should, from the time of her appointment in 1974, have been entitled, under paragraph 2 of article 10 of the Headquarters Agreement, to the partial exemption from liability to pay municipal rates mentioned in subparagraph (c) of paragraph 1 of article 10 of the Agreement;

(b) That the Respondent, having recognized the Applicant's status as an entitled senior official, was remiss in not insisting - by every means within his power including, if necessary, recourse to the procedure for resolving disputes concerning the interpretation or application of the Headquarters Agreement - that the United

Kingdom authorities accord to the Applicant the corresponding entitlements, thereby honouring the commitments of the United Kingdom under that Agreement;

(c) That since the provisions of the Headquarters Agreement between IMO and the United Kingdom Government prevail over other provisions of the domestic law of the United Kingdom, the insistence of the United Kingdom authorities that, in order for the Applicant to receive full exemption from municipal rates under the Headquarters Agreement, ownership of her principal residence must be registered in her sole name was an inappropriate demand which the Respondent ought to have identified as such;

(d) That the Applicant should be paid by IMO the sum of Pounds 9,642.56, plus interest between 31 December 1991 and the date of payment to the Applicant, calculated at the average rate earned by IMO on its deposit accounts, as compensation for the financial loss she has suffered in respect of rating relief under the Headquarters Agreement as detailed in ... to the present application;

(e) That the Applicant should be paid a further sum equal to the legal fees paid in respect of the transfer of ownership of her house, a transfer which would not have been necessary if the Headquarters Agreement had been properly applied;

(f) That the Applicant should be paid a further sum of Pounds 5,000 as compensation for the extreme slowness of the Respondent in dealing with this matter."

Whereas the Respondent filed his answer on 10 December 1992;

Whereas the Applicant filed written observations on 2 February 1993;

Whereas the facts in the case are as follows:

Françoise Darlington, a French national, entered the service of IMO on 1 January 1974, as a Translator at the P-3, step IV

level. The Applicant separated from the service of IMO with effect from 31 July 1992 and was repatriated to France.

The Applicant is married to Keith Morrison Darlington, a citizen of the United Kingdom. She and her husband jointly owned, at the time of her appointment, a house in the Borough of Camden. Under article 10, paragraphs 1(c) and 2 of the Headquarters Agreement between the IMO and the Government of the United Kingdom "...provided that they are not citizens of the United Kingdom and Colonies and are not permanently resident in the United Kingdom, Senior officials shall be exempt from ... that proportion of municipal rates levied on property occupied by them as a principal residence which does not represent payment for specific services rendered..."

In a Note Verbale dated 1 June 1976, the United Kingdom Protocol and Conference Department of the Foreign and Commonwealth Office (FCO) informed all Diplomatic Missions and International Organizations in London, of the policy regarding rating relief under the Headquarters Agreement. The pertinent part reads as follows:

> "Problems have also arisen in the case of female entitled persons accompanied in London by their husbands. To ensure that full diplomatic rating relief is accorded in such cases, it is essential that the responsibility for rates, under the agreement relating to the acquisition of the property, should rest exclusively with the entitled person.
>
> If documents relating to a property are amended so that there is a change in the responsibility for rates, this Department should be informed of the effective date of the change, in order that the diplomatic relief accorded can be adjusted appropriately. Any adjustment will be effective from the date of the change, provided this is no earlier than the beginning of the rating year in which the change is notified. ..."

In April 1979, the Applicant wrote to the Director of the IMO Legal Affairs and External Relations Division, asking that an

application for rates exemption on her residence be forwarded to the FCO on her behalf. She stated that she had not claimed the exemption when appointed "partly due to the fact that I was led to believe that I was not eligible for it, being married to a British citizen" and also, because she had been informed initially "that the situation would be easier if the house was in my name only". She also argued that there were male staff members of foreign nationality, married to British citizens who benefited from rate exemptions on their jointly owned house. She stated she saw "no reason whatsoever why the situation should be different in the case of a female staff member ... married to a British citizen."

On 10 April 1979, the IMO Head, Personnel Section, sent a formal communication to the FCO attaching rating relief forms completed by the Applicant, stating that "due to a misunderstanding", the Applicant had not claimed rating relief. Also, he inquired whether a retroactive adjustment could be made to the date of the Applicant's appointment. On 17 October 1979, the Head, Personnel Section, forwarded to the FCO, a statement of account with ratings for 1979/1980, for the Applicant's residence which had been received from the Borough of Camden. An undated and unsigned notation, presumably by the Head, Personnel Section, on a copy of the accompanying letter states: "Statement returned to us by Mr. Kami [FCO]. Given to [the Applicant] who will have to pay and produce receipt to claim rebate of 50% of the amount."

An exchange of correspondence ensued between the IMO Administration and the FCO concerning the rates exemption on the Applicant's residence and the Applicant's status. The FCO raised the question whether the Applicant should be considered a permanent resident of the United Kingdom. The Administration asserted that the Applicant was not a permanent resident. On 12 September 1980, the FCO accepted that IMO assertion, "on the clear understanding that Mrs Darlington's intention is to leave the United Kingdom when her appointment with IMCO comes to an end." Finally, a compromise solution on the rates was proposed by the FCO and accepted by the

Applicant, whereby the Applicant would be refunded 50% of the Treasury portion of the rates.

Three years later, in a memorandum dated 4 August 1983, the Applicant asked the Secretary-General to intercede on her behalf vis a vis the United Kingdom authorities and obtain full exemption from the municipal rates on her residence.

In a reply dated 10 November 1983, the Head, Personnel Section, informed the Applicant that the Secretary-General did not find it possible to accede to her request, in view of the advice provided to him by the Legal Department. He stated that although the Applicant had not been accorded "full exemption", she had "in fact been granted 50% of the rating relief." Her husband's nationality "did not determine [her] entitlement to such relief; the decision taken by the British authorities was based on the fact that the house is in the joint names of [her] husband and [herself] and that [her] husband, not being a dependent spouse under the Staff Regulations and Staff Rules, is not entitled to rating relief."

In May 1984, at the Applicant's request, the question of the Applicant's "rating relief ... including the methods of payment and reimbursement" was re-opened with the Protocol Department of the FCO. In a letter dated 25 September 1985, the Director, Administrative Division, wrote to the Head, Immunities and Privileges Section, FCO, requesting reconsideration of the decision to grant the Applicant 50% of the rating relief applicable to her house. He argued that the Administration considered "that this decision places Mrs. Darlington in a disadvantageous position and deprives her of a facility to which she is entitled as a non-permanent resident and senior official of IMO, by virtue of article 10 of the Headquarters Agreement." He further stated that "like other senior officials in this position at IMO, [the Applicant] should receive reimbursement of rates in full and should not be obliged to make payments before applying for reimbursement" and that IMO did "not think that the fact of co-ownership should affect [the Applicant's] rights under the Headquarters Agreement

which refers only to occupation of property and not to ownership." In a reply dated 10 December 1985, the FCO rejected the request on the following grounds:

> "[The Applicant] is not the rateable occupier of the property and is not liable to pay rates. Her husband is. The Headquarters Agreement only exempts [the Applicant] and not her husband; it is, therefore, not strictly relevant. As a concession, however, and in accordance with the treatment we accord to similar cases in diplomatic missions, we are prepared to offer 50% relief."

A further exchange of correspondence ensued between the Applicant and the Administration. The Applicant argued that since there existed a dispute between the IMO and the Government of the United Kingdom concerning the interpretation of the Headquarters Agreement, the matter should be referred to arbitration under article 17 of the Agreement. On 5 September 1986, the Director, Administrative Division, wrote again to the FCO. He stated that the Applicant alleged that she was "being treated differently from male members of staff in the same position as herself, that is in joint ownership of a property with a spouse" and that she had raised the question "if the ownership of the property were to be changed to her name exclusively, ... she would then become eligible for rating relief." In a reply dated 31 October 1986, the FCO confirmed its position that only the Applicant and not her husband, was exempt from the municipal rates, adding that: "The reason that full rating relief cannot be granted in the present circumstances is that under the law of the United Kingdom [the Applicant] is not the rateable occupier: her husband is." If the property were transferred to the Applicant's name, "full rating relief can be granted ... with effect from the date of the transfer."

On 11 December 1986, the Applicant informed the Director, Administrative Division, that the residence she owned jointly with her husband would be transferred to her name and that she would request the Administration "to compensate her for the rates

[she] was wrongly asked to pay, first in full between the date of my appointment in January 1974 up till 1981, and ... in part, after the ... Protocol and Conference Department agreed to grant me 50% of the rating relief normally given to other senior officials."

On 8 May 1987, the Applicant informed the Administration that she and her husband had made the necessary arrangements to transfer their house to her name. She asked that the FCO be informed accordingly "so that from now on the usual treatment given to senior officials of the Organisation is also applied to me." She also submitted a claim for Pounds 6,856, representing the financial loss she had suffered over the years.

An exchange of correspondence ensued between the Applicant and the Administration, on the one hand and between the Administration and the FCO, concerning the transfer of the property and the Applicant's residential status under British law.

On 25 April 1988, the Director, Administrative Division, forwarded to the FCO a copy of a document dated 10 November 1987, recording the transfer of the property previously held jointly with her husband, to the Applicant. He asked the FCO to make the necessary arrangements to grant the Applicant "normal exemption from municipal rates from the date of the transfer, rather than the present 50% exemption." On 25 May 1988, IMO was advised officially that the Applicant was entitled to full diplomatic rating relief and that a refund was due in respect of the period 10 November 1987 to 31 March 1988.

In a memorandum dated 27 May 1988, the Director, Administrative Division, informed the Applicant, inter alia, that IMO did "not feel that the Organisation has any liability to pay a portion of your rates bill since 1974."

On 24 June 1988, the Applicant requested the Secretary-General to review that decision. On 24 August 1988, the Applicant lodged an appeal with the Joint Appeals Board (JAB).

The Board adopted its report on 12 June 1991. The conclusions and recommendations of the majority of the Board read as follows:

"Conclusions by the majority of the Joint Appeals Board

6.9 The Joint Appeals Board considered at length the rights and entitlements under the Headquarters Agreement. It was recalled that the immunities and privileges were conferred in the interest of the Organization. Nevertheless the majority of the Joint Appeals Board considered that since the privileges related to rate relief are granted to all non-resident senior officials, there appeared to be no valid reason why this privilege should not be granted to a staff member just because of (her sex). The fact that the law or practice of the UK may discriminate in this respect should have no bearing on the entitlement of a staff member.

6.10 Article 10, paragraph 2 provides that 'All senior officials shall be exempt from income tax on their emoluments. Provided that they are not citizens of the United Kingdom and Colonies and are not permanent resident in the United Kingdom, senior officials shall be exempt from the taxes listed in subparagraphs (a) to (g) of paragraph 1 of this article.' (Paragraphs (a) to (g) provide inter alia

> '(c) that proportion of municipal rates levied on property occupied by them as a principal residence which does not represent payment for specific services rendered;'

6.11 This paragraph does not address the issue of whether the senior official owns or rents a property but merely refers to occupancy. For the sake of argument the official could be living with someone free of charge and article 10 would surely still apply as long as the Organization is officially notified of the address of the official.

6.12 The majority of the Joint Appeals Board therefore were of the opinion that Mrs. Darlington should be entitled to compensation for the proportion of the rates she has paid since her appointment in 1974. The fact that the Respondent claims non-awareness of the circular from 1976 when the FCO notified missions and international organizations of the conditions for the rate relief scheme does not, in our view, exonerate the Respondent from his

obligation to provide a senior official of the Organization with her entitlements. We therefore propose that compensation be granted on the following lines:

6.13 The Appellant should be reimbursed the part of the rates that she, in our view, erroneously was asked to pay in the period from 1974, up until the time when her full entitlements were granted. In making this recommendation it is recognized that the FCO also has a share of the responsibility for not providing the right answers in the correspondence with the Respondent, but this is a matter between the host Government and the Respondent.

6.14 He should also be granted interest on the sum referred to above.

6.15 The Joint Appeals Board also considered the question of whether compensation or reimbursement cost for legal advice and services should take place. It was the opinion of the Joint Appeals Board that it would be inappropriate for the Organization to reimburse a staff member for obtaining legal advice on interpretations of the Headquarters agreement and indeed on its application related to the transfer of the ownership of the house in question. It was therefore the unanimous opinion that no compensation should therefore be granted for the legal fees paid in respect of the transfer of ownership of a house, nor for any other legal advice she obtained.

6.16 Although the Respondent has reacted with extreme slowness in dealing with this matter, we are of the opinion that no additional ex gratia payment should be paid as compensation if the preceding recommendations are accepted.

...

Recommendations by the Majority of the Joint Appeals Board

7. Summary of recommendations

7.1 In the light of the above considerations and conclusions, the recommendations by the majority of the Board are as follows:

7.1.1 Compensation should be granted to the Appellant equivalent to the part of

the rates she was asked to pay since her appointment in 1974.

7.1.2 She should be granted interest on that sum referred to in the preceding paragraph."

In a dissenting opinion, a member of the Board recommended as follows:

"Recommendation by the Dissenting Member of the Board

7.2 The dissenting Member of the Board is unable to endorse the recommendations in 7.1.1 and 7.1.2 hereunder for the reasons referred to in ... The dissenting Member recommends that a substantial ex gratia payment be made to the Appellant, bearing in mind that she would have benefitted if she had received on time the Foreign and Commonwealth Office communication dated 1 June 1976."

On 21 May 1991, the Director, Administrative Division, transmitted to the Applicant a copy of the JAB report and informed her that the Secretary-General, having reviewed the facts in her case vis-à-vis the JAB's report, had "decided, after careful consideration, not to accept the Board's decision [sic]." He added:

"3. The Board's report indicates that, as far back as 1979, you were aware that the obvious way to obtain the rating exemption in full was to be the sole owner of the property. Indeed, the report refers to your statement that you were 'initially told that the situation would be easier if the house was in [your] name only'. The Board's reference to the fact that you apparently were not told specifically of the Note of 1 June 1976, from the Foreign and Commonwealth Office is therefore of limited relevance. In any case, the Secretary-General considers that it would have been improper for the Organization to advise you to transfer the legal title of your jointly-owned property to your name only since this was a matter strictly between yourself and your husband. The alleged failure by

the Organization to advise you on this matter, therefore, cannot in any way be seen as a breach of contractual duty.

4. The Secretary-General notes the Board's submission that the Organization should have evoked the Headquarters Agreement and declared a dispute with the United Kingdom Government. The Secretary-General does not accept this submission; the fact remains that there was no dispute between the Organization and the United Kingdom Government since the United Kingdom tax law in this case did not infringe on the Headquarters Agreement."

On 21 February 1992, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The Applicant is entitled to the municipal rate exemption in article 10 of the Headquarters Agreement between the IMO and the Government of the United Kingdom on the grounds of her nationality and her non-resident status in the United Kingdom.

2. The Applicant was unaware, in 1979, of the "special policy" espoused by the United Kingdom authorities for "female entitled persons accompanied in London by their husbands". This policy was discriminatory and would have been appealed at the time had it been known.

3. The IMO's policy was discriminatory against female staff members as male officials whose wives were UK nationals were eligible for the rate exemption under article 10 of the Headquarters Agreement.

4. The Respondent was remiss in not insisting that the authorities of the host country accord the appropriate entitlements to the Applicant under the Headquarters Agreement.

5. The obligation to settle disputes under that agreement by resort to arbitration is a treaty obligation on whose performance IMO should have insisted.

Whereas the Respondent's principal contentions are:

1. Matters involving interpretation and application of the Headquarters Agreement fall outside the competence of the Tribunal's jurisdiction.

2. No conflict exists between the Headquarters Agreement and United Kingdom law or practice.

3. The practice of the United Kingdom Government is an "external factor" and no discrimination by IMO can be shown.

4. Failure of the Applicant to follow advice initially given to her and the failure of the Applicant to act were the cause of her rating exemption problems.

5. IMO is not financially responsible for the Applicant's rates.

The Tribunal, having deliberated from 4 June to 23 June 1993, now pronounces the following judgement:

I. The Applicant, who is a French national and was a senior official in the International Maritime Organization (IMO), challenges a determination by the Secretary General of the IMO dated 21 May 1991, denying her claim for reimbursement of certain local taxes between 1974 and 1987, on a residence in England owned and occupied jointly by her and her husband, a British national. The Secretary General also denied related claims for interest plus certain legal fees. In addition to the foregoing, the Applicant claims compensation for alleged delay by the IMO.

II. The Applicant has taken the position, with the consistent support of the IMO, that she was not a permanent resident of the United Kingdom (UK). Although from time to time the UK Foreign and Commonwealth Office (FCO) disputed this, it nevertheless eventually acceded to the contentions of the IMO and accepted that the Applicant was not a permanent resident. Having a non-resident status, the Applicant believed that she was entitled to exemption under the Headquarters Agreement between the IMO and

the UK from local residential taxes with respect to both her and her husband's interests in their residence. Her basis for that belief is article 10(1)(c) of that Agreement which exempts senior IMO officials who are neither UK citizens nor permanent residents in the UK from:

> "that proportion of municipal rates levied on property occupied by them as a principal residence which does not represent payment for specific services rendered;"

III. The FCO, however, does not interpret the above quoted words in the same manner as the Applicant. In the FCO's view, the word "occupied" refers to the rateable occupier of the premises, i.e., the person responsible for the payment of taxes. This is not a surprising reading of the quoted provision since there would seem to be no reason for extending the tax exemption to someone not responsible for paying the taxes. Hence, the FCO position was that if the person entitled to exemption under the Headquarters Agreement was not the person responsible for paying the taxes, no exemption was available thereunder. This was spelled out in a Note dated 1 June 1976, distributed by the FCO to international organizations in London, but which, perhaps through inadvertence, may not have come to the attention of the IMO until it was forwarded by the FCO with a letter dated 31 October 1986. The letter and the Note explained why the FCO took issue with the Applicant's interpretation of article 10, and what would be required for her to receive a full exemption. The letter stated that, under UK law, the Applicant's husband was deemed to be the rateable occupier of the premises, but that if the ownership of the residence were entirely in her name, she would be eligible for the full benefit of article 10(1)(c), a point that is implicit in the language of the 1976 Note dealing with "female entitled persons accompanied in London by their husbands." The letter also noted that, "as a concession" in such cases where property is held in joint ownership and the spouse responsible for paying the taxes is

not the person covered by the Headquarters Agreement, "the Government may grant 50% relief." Apparently, the FCO took the view in such cases that it would be fair and reasonable to attribute responsibility for payment of the taxes to each spouse in the same proportion as their ownership interests.

IV. In fact, the Applicant had been receiving a 50% concession since 1981. In 1979, she had insisted that, merely by reason of her occupancy, she was entitled to a full exemption under the Headquarters Agreement. She also argued that she was being treated unfairly because male senior officials whose wives were UK nationals were eligible for the benefit of article 10(1)(c) of the Headquarters Agreement. Apparently, the 50% concession was offered to, and accepted by her in 1979, but because of questions in 1979 and 1980, about her non-resident status, she did not receive it. In 1981, those questions were resolved and the Applicant again agreed to settle her residential tax exemption dispute on the basis of the 50% concession referred to above. She was reimbursed, on that basis, for the taxes on her and her husband's residence. But in 1983, she decided to raise the issue once again and the IMO's response reflected the FCO's interpretation.

V. For the next two years, she unsuccessfully pressed her point of view on the IMO Administration but ultimately in 1985, the IMO advanced her contentions to the FCO in an effort to persuade the latter to grant a total rather than a 50% exemption. However, the FCO remained unmoved. Within the IMO, a confidential legal opinion had previously been rendered in 1983, analyzing the Applicant's claims, including her assertion that she was the victim of sex discrimination by the UK and had concluded, as had a similar legal opinion in 1987, that her position was unmeritorious. Although the Applicant had sought to have the IMO invoke, on her behalf, the arbitration procedure provided in the Headquarters Agreement for the resolution of disputes as to the interpretation of the Agreement, the IMO did not take such action. It appears to have

lacked confidence that the Applicant's position would prevail in an arbitration and evidently believed that the 1981 settlement was a fair and reasonable resolution of the problem. Moreover, the IMO indicated that it wished to avoid a major controversy with the FCO due, in part, to concerns that this might adversely affect the IMO in its relations with the Host Government in other matters where the FCO's willingness to be cooperative was of importance.

VI. Although the Applicant was aware, at least as early as 1979, that if ownership of the residence were entirely in her name, it would be easier for her to obtain the tax exemption she was seeking, she and her husband did not pursue that avenue until 1987, after it had become quite clear from the 31 October 1986 letter referred to above, that the FCO's position, as explained in the 1976 Note, was not going to change. In 1987, the Applicant's husband transferred his ownership interest in their residence to her. Since that time, she has been accorded the full benefit of article 10(1)(c) of the Headquarters Agreement. Nevertheless, she maintains before the Tribunal that her interpretation of article 10 is correct, and that, therefore, the IMO is liable to her for the local taxes paid on her residence since 1974, in excess of what would have been payable had article 10 been applied properly. She asserts that she was told, erroneously, in 1974, by an IMO official that, because her husband was a British national, she would not be entitled to the exemption. She also faults the IMO for not invoking arbitration under article 17 of the Headquarters Agreement and for failing to draw to her attention until 1986, the FCO 1976 Note and to instruct her about the transferral of ownership as a precondition to tax exemption. Her claim for costs, relating to the 1987 ownership transfer, is based on her belief that it would have been unnecessary had the Headquarters Agreement been interpreted correctly.

VII. The principal argument of the Respondent before the Tribunal is that this case is not within the Tribunal's competence since it

involves interpretation and application of the Headquarters Agreement. Without doubt, the Applicant's entitlement to the tax exemption she claims depends on the validity of her interpretation of the Headquarters Agreement.

VIII. The first question to be decided by the Tribunal is whether it is competent to interpret the Headquarters Agreement. IMO staff regulation 1.8 provides that: "The immunities and privileges attached to the International Organization are conferred in the interest of the Organization." From this, it appears to the Tribunal that article 10(1)(c) of the Headquarters Agreement was not included among the terms of the Applicant's contract of employment. Nothing in the terms of the contract of employment, including the IMO Staff Regulations or Staff Rules is to the contrary, or refers to article 10(1)(c). Hence, the allegations of the Applicant do not automatically invoke this Tribunal's jurisdiction. Moreover, the fact that the IMO and the UK established an independent arbitration procedure for the resolution of interpretation disputes between them clearly indicates that, except in circumstances of non-observance of terms of appointment by the Respondent - plainly not the situation here - jurisdiction was not conferred on this Tribunal to pronounce an interpretation of the Headquarters Agreement. In the absence of such circumstances, the requirements of article 2 of the Tribunal's Statute which limits the competence of the Tribunal to "applications alleging non-observance of contracts of employment of staff members...", would not be met. Finally, the Tribunal sees no justification in this case for creating even the possibility of conflicting interpretations.

IX. Neither the Applicant nor the Respondent has drawn the Tribunal's attention to any prior judgement of the Tribunal dealing with its competence to interpret or apply a Headquarters Agreement between an International Organization and a Host Government defining their relationship. The Tribunal also has been unable to

find one. The Applicant has, however, cited two judgments of the International Labor Organization Administrative Tribunal (ILOAT), No. 369, Nuss (1979) and No. 741, Farinetti et al. (1986).

In Nuss, the outcome did not depend upon an interpretation of the Headquarters Agreement by the ILOAT and it was not called upon to render any such interpretation to resolve a dispute between the parties as to its meaning. In Nuss, the ILO merely held that tax exemption entitlements under a superseded Headquarters Agreement created no acquired rights and therefore the fact that the successor Headquarters Agreement, following a merger, did not continue all of the prior tax exemption entitlements did not cause injury to the Applicants.

Farinetti et al. did not involve a Headquarters Agreement. The case related to a separate agreement between the Government of Italy and the ILO aimed at resolving actuarial pension funding problems which had arisen concerning Italian nationals in the employ of the ILO who had been affiliated with the Italian State Pension scheme and, as a result, were ineligible for participation in the United Nations Joint Staff Pension Fund during some, but not all, years of their ILO service. In that case, the ILOAT found that whatever it ruled would affect only relations between the ILO and its staff, but would have no bearing on the validity of the separate agreement or the state sovereignty of Italy. The ILOAT then dismissed the proceeding on the ground that the position taken by the complainants was not founded on anything in the Agreement and that there had been no violation of the principle of equality between staff members. The Tribunal is unable to find, because of their distinguishing features, any compelling precedential direction in the ILOAT cases cited.

X. Also, the Tribunal does not find, in this case, any basis for faulting the Respondent's unwillingness to invoke the arbitration provision of the Headquarters Agreement. The Tribunal notes that relations between an International Organization and a Host Government involve matters of sensitivity and delicacy as to

which the former must have reasonable discretion. It was within the Respondent's reasonable discretion, to decide whether the IMO wished to litigate with the UK over the validity of the position being urged by the Applicant. The Respondent was not obliged to do so merely because the Applicant was insisting on that course. The Respondent had valid reasons for declining and had, in fact, attempted to be of assistance to the Applicant, insofar as the FCO was concerned.

XI. The Tribunal has difficulty in attaching decisive significance to the advice allegedly received by the Applicant in 1974, from an IMO official, to the effect that she was not entitled to a tax exemption because her spouse was a British national. Even assuming that this is what she was told, it was not really wide of the mark. For the FCO was acting on the premise that, under UK law, a British husband was deemed to be responsible for the payment of taxes if he had an ownership interest in the property and that in no event would a British national be entitled to benefit under article 10(1)(c) of the Headquarters Agreement. Had the Applicant pursued the matter further at that time, she would, if no questions as to her non-resident status intruded, doubtless have received, by 1976, the 50% concession. In this connection, the Tribunal also has some difficulty, as did the IMO's Legal Counsel, in seeing sex discrimination as the motive or as the effect of the FCO's interpretation and application of article 10(1)(c), particularly in the light of its 50% concession practice. If sex discrimination were involved, its source appears to be, not action for which the IMO can or should be held accountable, but presumptions under UK real estate law, which this Tribunal is not competent to alter.

XII. Nor was the Respondent at fault in not advising the Applicant that ownership of her residence should be transferred. That was a family matter for her and her husband to decide. She knew enough, at least as early as 1979, to have investigated that possibility on her own to the extent necessary, and then to decide

with her husband what, if anything, they wished to do about it. Hence, it is by no means clear that if she had seen the 1 June 1976 Note circulated by the FCO, she and her husband would have acted differently than they did before 1987. Finally, it seems fairly obvious that the FCO was probably aware from the complaints of the Applicant brought to its attention by the IMO that there might be cases of IMO senior officials receiving greater tax exemptions than they were entitled to. However, it is difficult, as a practical matter, to criticize the IMO for not insisting either that the FCO impose larger taxes on IMO staff members, or that UK law was outdated and that the realities of modern life called for a different approach. Such insistence would not have ensured a different end result beneficial to the Applicant.

XIII. For the above reasons, the Tribunal:

(a) Decides that it is not competent to entertain the application to the extent that this would require an interpretation, by the Tribunal, of article 10(1)(c) of the Headquarters Agreement;

(b) Decides that the Applicant's other pleas are lacking in merit; and

(c) Rejects the application.

(Signatures)

Jerome ACKERMAN
President

Ioan VOICU
Member

Francis SPAIN
Member

Geneva, 23 June 1993

R. Maria VICIEN-MILBURN
Executive Secretary